IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 812 OF 2005

Mary Joy Pawar ...Petitioner

Versus

Ashok Ram ...Respondent

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Mr. Mahendra Bajpai, counsel for Petitioner

Mr. C.M. Korde, Senior counsel with Mr. Vishal Kasbekar with Mr. Girish Korde with Mr. Jeevan Goge counsel for the Respondent.

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CORAM: B. H. MARLAPALLE, J.

DATED: 12TH APRIL, 2005

P. C.:-

1. Heard Mr. Bajpai, the learned counsel for the petitioner and Mr. Korde, the learned senior counsel for the respondent.

2. Rule.

3. Respondent waives service. Rule is taken up for hearing forthwith by consent of the parties.

4. In S.C. Suit No. 2375 of 2003 the plaintiff had taken out Notice of Motion for contempt and it was registered as Notice of Motion No. 1990 of 2003 against the defendants. It was dismissed in default

on 4.2.2004. The plaintiff, therefore, took out a Notice of Motion No. 681 of 2004 for setting aside the order dated 4.2.2004 dismissing the Notice of Motion No. 1990 of 2003 in default. This Notice of Motion No. 618 of 2004 was allowed by the court below on 7.4.2004 and consequently the Notice of Motion No. 1990 of 2003 came to be restored to the file.

5. However, the Notice of Motion No. 618 of 2004 was erroneously placed before the trial court on 27.8.2004 and without noticing the order dated 7.4.2004, the said Notice of Motion was dismissed in default. The plaintiff under these circumstances filed an application on or about 25.1.2005 and prayed for corrections of the order dated 27.8.2004 and place on board the Notice of Motion No. 1990 of 2003 for final hearing. This application has been rejected by the trial court on 3.2.2005 and hence, this petition.

6. As noted earlier, the Notice of Motion No. 618 of 2004 was allowed on 7.4.2004 itself and it is apparent that it came to be listed erroneously before the court again on 27.8.2004. The learned Judge’s attention was not drawn to the order dated 7.4.2004 and the said Notice of Motion had dismissed in default on 27.8.2004. An application moved for

corrections by the plaintiff was required to be allowed and the reasoning given by the court below in the impugned order dated 3.2.2005 is contrary to the record. The petition therefore, succeeds.

7. In the result, the petition is allowed and the impugned orders dated 27.8.2004 as well as 3.2.2005 are hereby quashed and set aside. Resultantly the contempt Notice of Motion No. 1990 of 2003 is restored to the file.

8. The parties are aware that the trial of the suit has been expedited and has been directed to be decided within a fixed period. All the pending Notices of Motion for contempt initiated by the respective parties are directed to be heard and decided alongwith the main suit.

9. Rule made absolute accordingly with no order as to costs.

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